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EXAMINER

NELSON, FREDA ANN

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/015,866	Applicant(s) HINNEBUSCH, MICHAEL	
	Examiner FREDA A. NELSON	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-18,20-24,27-43,45,48,49,51,53,57-64,66-69 and 71-90 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-18,20-24,27-43,45,48,49,51,53,57-64,66-69 and 71-90 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment received on August 29, 2008 is acknowledged and entered. Claim 1, 3-18, 20-24, has been amended. Claims 2, 19, 25-26, 44, 46-47, 50, 52, 54-56, 65 and 70 have been canceled. Claims 77-90 have been added. Claims 1, 3-18, 20-24, 27-43, 45, 48-49, 51, 53, 57-64, 66-69, and 71-90 are currently pending.

Response to Amendments and Arguments

Applicant's arguments filed July 28, 2008 have been fully considered but they are not persuasive.

In response to Applicant's argument that the prior art does not teach "translation" or "translating the private personalized exercise routine, stored in and retrieved from the portable memory device, to a different personalized private exercise routine for each different type of user-selected exercise equipment and independent claim 76 has been amended to include the operation of: translating a private personalized exercise routine, stored in and retrieved from a portable memory device, to a different private personalized exercise routine for each different type of user-selected exercise machine", the Examiner respectfully disagrees. Shaw et al. disclose the exercise monitoring analyzer programs may be written in a machine language, or at a higher language using procedures appropriate for the actual microprocessor in use, to execute the required computations here before described. A suitable computer for the exercise monitoring analyzer is a general purpose microprocessor, such as an IBM PC. Alternatively, one or more microprocessors similar to the IBM PC may be suitably

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interconnected and programmed to perform the functions required of the exercise monitoring analyzer (col.18, lines 13-35).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 3, 5-6, 20, 62, and 76-77- are rejected under 35 U.S.C. 102(b) as being anticipated by Shaw et al. (US Patent Number 4,817,940).

2. As per claims 1 and 76, Shaw et al. disclose an apparatus to produce an exercise routine personalized by a user, the apparatus method of creating a personalized exercise routine, the method including:

a first computer system programmed so as to facilitate forming machine-readable instructions corresponding to a personalized exercise routine, wherein protecting said machine-readable instructions are protected as private to a the user(col. 2, lines 7-12; col. 3, lines 22-26; abstract);

a portable memory device storing the personalized exercise routine formed in the machine-readable instructions and received from the first computer system in a memory device(col. 7, lines 39-44); and

a second computer system programmed to carry out operations comprising user-triggered enabling of: translating the private personalized exercise routine, stored in the portable memory device and retrieved from the portable memory device, to a different personalized private exercise routine for each different type of user-selected exercise machine (col. 7, lines 45-58); and

controlling an exercise machine in carrying out the different personalized private exercise routine (col. 7, lines 45-58).

3. As per claims 3 and 77, Shaw et al. disclose an apparatus to create a personalized exercise routine, the apparatus method of using a system, the method including:

a first computer system programmed so as to provide providing at least one user interface that allows a user to select a type of exercise machine, and to create a private

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personalized exercise routine for the type of exercise machine that is selected (col. 13, lines 49-59);

a second computer system programmed so as to carry out operations including translating the private personalized exercise routine, stored in and retrieved from a portable memory device, to a different personalized private exercise routine for each different type of user-selected exercise machine (col. 7, lines 45-58); and

wherein said second computer system is comprised of providing at least one of the types of exercise machine that carries out one said different to enable the exercise routine (col. 7, lines 45-58; col. 13, lines 49-59; FIG. 7).

4. **As per claim 5**, Shaw et al. disclose and apparatus of claim 1, wherein the operations include further including the steps of: forming a profile of the user (col. 18, lines 14-31); and

maintaining the profile of the user as personal to the user (col. 7, lines 39-58).

5. **As per claim 6**, Shaw et al. disclose the apparatus of claim 3, wherein the operations include: allowing a user profile to be formed and stored in a personal account that is maintained, by the system, as personal to the user (col. 7, lines 39-58).

6. **As per claim 20**, Shaw et al. disclose the apparatus of claim 3, wherein the first computer system is programmed so as to facilitate forming a set of exercise routines that use different types of exercise machines and storing the set in the portable memory device (col. 7, lines 39-58; col. 13, lines 49-59).

7. **As per claim 62**, Shaw et al. disclose the apparatus method of claim 6, wherein the operations include facilitating inputting into said profile of the user's birth date, gender, weight, height, or health history (col. 3, lines 26-31).

8. **Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw et al. (US Patent Number 4,817,940), in view of Watterson et al. (US Patent Number 6,458,060), still in further view of Clem (Patent Number 6,527,674).**

9. **As per claim 4**, Shaw et al. do not disclose the apparatus of claim 1, wherein the operations include storing, in a personal account, medical information and a charge card number respectively corresponding to the user, wherein said account is maintained as personal to the user.

However, Watterson et al. discloses that the step of storing the personal exercise routine includes a charge card number (col. 35, line 62 through col.36, line 8).

Clem discloses that the first plurality of information, may include, for example, a set of fitness goals for the user, at least one parameter (age, weight, sex, height, and medical conditions of the user) and includes all information entered by the user.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Shaw et al. to include the personal account feature of Watterson et al. and medical condition parameter of Clem in order to create a more personalized exercise routine for the user since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

10. Claims 7-11, 14-18, 21-24, 27-40, 42-43, 45, 49, 51, 53, 57-59, 66-69, 71-73, 79-82, 85- 87, and 89-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw et al. (US Patent Number 4,817,940), in view of Watterson et al. (US Patent Number 6,458,060).

11. As per claim 7, Shaw et al. disclose communicating signals corresponding to the exercise routine over a network to control over the different type of exercise machine (FIG. 1).

Shaw et al. do not disclose the apparatus of claim 3, wherein said forming machine-readable instructions includes: programming a cardiovascular routine and wherein signals corresponding to the exercise routine are communicated over a network as the different type of exercise machine.

However, Watterson et al. disclose in the event that only audio program session is desired, the user initially selects the type of equipment that the program is to be used, such as, but not limited to treadmills, cycles, steppers, hikers, climbers, Nordic style devices, ellipticals, and the like.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention Shaw et al. to include the feature of Watterson et al. in order to provide the user with the ability to program a variety of exercises focusing on different parts of the body. Also, it is old and well known in the health industry to provide users of exercise equipment with cardio exercises .

12. As per claim 8, Shaw et al. do not disclose the apparatus of claim 3, wherein said operations include: accessing, via a virtual private network, a web-accessible library of modifiable preprogrammed routines; and modifying one of said preprogrammed routines.

However, Watterson et al. disclose that by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6); and routines that each user and/ or trainer may save

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unique exercise programs created by the user and/or trainer within data storage 390 accessible by mailbox module 386 (col. 39, lines 43-45 and FIG. 16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order to provide the user the ability to modify or personalize an exercise routine to fit his needs .

13. **As per claim 9**, Shaw et al. do not disclose the apparatus of claim 3, wherein the first computer system is programmed as to facilitate: selecting a type of cardiovascular fitness machine as the different types of exercise machine, and specifying a duration of an exercise routine, a number of time intervals, an exercise intensity, and a speed for each of the intervals.

Watterson et al. disclose it is possible for a user to exercise on a device, such as a treadmill, while a trainer receives data regarding the operating parameters of the treadmill, such as, speed, inclination, etc.; and upon receiving this data, the trainer can modify the operating parameters of the user's treadmill such that the user achieves a program designed by the trainer (col. 3, lines 50-57).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order to provide the user with the ability to program a variety of personalized exercise.

14. **As per claims 10 and 78**, Shaw et al. disclose the apparatus of claim 1, the first computer system is programmed so as to facilitate further including: downloading and storing the exercise routine on a the portable memory device that is physically transportable to said exercise machine to enable said user-triggered engaging step(col. 7, lines 45-55).

15. **As per claim 11**, Shaw et al. does not expressly disclose the apparatus of claim 12, wherein said step of storing includes storing by making an addition to a library of routines (col. 31, line 55-col. 32, line 12). However, the Examiner takes official notice that it is old and well known in the computer art to store additional routines and/or files in a library. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exercise device of Watterson et al. to include the library so users could access and store exercise routines.

16. **As per claim 14**, Shaw et al. does not explicitly disclose the apparatus of claim 3, wherein the operations include providing to the first computer system, via communication over a network an agreement to abide by gym rules. However, the fact of obtaining, via a communication over a network with a user computer an agreement to abide by gym rules is nonfunctional descriptive matter. It is not functional interrelated with the useful acts of the claimed invention and thus will not serve as limitation. The steps of accessing and engaging the machine-readable instructions to control the exercise machine in carrying out the personal exercise routine would be performed the

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same regardless of whether the equipment is in a gym or a home. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the gym membership limitations because such data does not functionally relate to the steps in the method claimed and does not patentably distinguish the claimed invention.

17. **As per claims 15-16**, Shaw et al. do not disclose the apparatus of claim 5, wherein the operations said step of forming a profile includes forming a profile including a charge card and authorization for use of the card; and wherein the operations include providing user access to the Internet at the exercise machine that carries out the one said different exercise routine wherein said providing includes providing the control over both of said types of exercise machine.

However, Watterson et al. discloses information is gathered from the user, payment information, such as credit card numbers, accounts and the like may be obtained from the user (col. 35 lines 62-64); and communication module 254 may optionally include a consumer purchase module 310 which enables a user to make purchases online (col. 38, lines 48-60 and FIG. 12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order provide the user the convenience of paying with a credit card.

18. **As per claim 17**, Shaw et al. do not disclose the apparatus of claim 3, further including an interface for communicating at least some personal profile data between computer systems of different gyms.

However, Watterson et al. disclose another object of the present invention is to provide an exercise system that enables a user to access various exercise equipment and information from a variety of locations (col. 2, lines 50-55; col. 36, line 61-66).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order to provide the user the convenience of using different equipment at several other locations.

19. **As per claim 18**, Shaw et al. do not disclose the apparatus of claim 15, wherein the operations include enabling, with the stored charge card number, carrying out an on line purchase from the different type of exercise machine while exercising.

However, Watterson et al. disclose information is gathered from the user, payment information, such as credit card numbers, accounts and the like may be obtained from the user (col. 35 lines 62-64); and communication module 254 may

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optionally include a consumer purchase module 310 which enables a user to make purchases online (col.38, lines 48-60 and FIG. 12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of making purchases online while exercising.

20. As per claims 21-24, Shaw et al. do not disclose the apparatus of claim 3, wherein the operations include providing a control for at least one type of media including video, TV, e-mail, stock prices, news, horoscope, hobby information, Internet media, or an electronic magazine, the control being stored in a profile stored in a profile of the user; and wherein the providing a control is carried out with two of the media; and wherein the providing a control is carried out with three of the media; and implementing the control by displaying media at said second exercise machine. .

However, Watterson et al. disclose by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of making purchases online from any exercise equipment while exercising.

21. As per claims 27-28 and 87, Shaw et al. do not disclose the apparatus further including providing a browser interface presented at said exercise machine to control Internet communication.

However, Watterson et al. disclose by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of viewing online content and making purchases online from any exercise equipment while exercising.

22. As per claims 29-30, Shaw et al. do not disclose the apparatus of claim 27, further including the interface for communicating the machine-readable signals into a controller between the Internet and the exercise equipment.

However, Watterson et al. disclose activation of the communication system 18 enables exercise devices to have the potential of being controlled during an exercise program by a third party (col. 10, lines 32-39 and FIG. 6); and by activating the iFit.com button 82 a user can perform programming, download or access programming

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materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of downloading exercise routines from a host from any exercise equipment.

23. As per claims 31 and 43, Shaw et al. do not disclose the apparatus of claim 5, wherein the operation further include controlling with said profile output to a display device and a speaker jack at the exercise machine.

However, Watterson et al. disclose control panel 22 includes multiple video output devices 94 wherein the Video output device may allow a user to watch various types of entertainment and/or surf the internet, while receiving images representative of the exercise profile that they are following whether, periodically, upon activation of a user control, or the like (col.13, lines 18-27); and control panel 22 includes an audio output device 96, such as a hardwired and wireless speakers (col.13, lines 28-40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of controlling the volume and the picture on an exercise machine.

24. As per claims 32-33, Shaw et al. do not disclose the apparatus of claim 6, wherein the operations include further including the step of controlling with said profile interaction with Internet communication while exercising by use of a device from the group consisting of a video game joystick on said exercise machine and a flexible touch pad on the handles of the machine; .

However, Watterson et al. disclose panel 22 may include an integrally formed mouse 100, a keyboard jack 102 for an external keyboard 103, a controller port 104 for receiving one of a variety of games controllers, an integrally formed mouse 100, a touch sensitive video display, and various other ports, jacks, or the like to receive various other external components (col.12, lines 31- 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of interacting with machine or websites while exercising.

25. As per claim 34, Shaw et al. do not disclose the apparatus of claim 33, wherein said hands-free programming includes selectable the content and presentation format coordinated with timing of the exercise routine.

However, Watterson et al. disclose if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and

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transmits the data to either the integrally formed video output device 92 (col. 37, lines 33–44; FIGS. 1 and 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of interacting with machine while exercising.

26. As per claims 35-37, Shaw et al. do not disclose the apparatus further including the step of monitoring and heart rate with a sensor at the equipment and monitoring speed and intensity of the exercise routine; and storing said heart rate, speed, and intensity.

However, Watterson et al. disclose the interface 190 is configured to transceive audio and visual signals of the user exercising, data and information about the user such as, heart rate, blood pressure, and the like that has been gathered by one or more health monitoring devices (col. 18, line 64 to col. 19, lines 1-4 and FIG. 8); if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92 (col. 37, lines 33–44; FIGS. 1 and 6);) {the exercise profile of the intensity of various exercise criteria is displayed continually or periodically to the user during the performance of the programming (col. 7, lines 33-37).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide a safety mechanism for the user, as well as, storing the readings for comparisons.

27. As per claims 38-39 and 86, Shaw et al. do not disclose the apparatus of claim 3, wherein the first computer system is programmed to facilitate utilizing a calendar function to schedule use of the exercise machine; and utilizing a calendar function to schedule use of a group of pieces of exercise equipment such that the routine is carried out on said pieces of machine.

However, Watterson et al. disclose in one alternate embodiment, calendaring module 384 is linked with private room 394 such that upon scheduling a one-on-one exercise program, a private room is automatically scheduled for the user; and additionally, calendaring module 384 may automatically send a message to the users mailbox, thereby providing the user with information regarding the particular private room scheduled and a reminder of the schedule time (col. 40, lines 9-16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide a the user the convenience of scheduling safety mechanism for the user, as well as, storing the readings for comparisons.

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28. **As per claim 40, 61 and 79**, Shaw et al. do not disclose the method of claim 3, further including a virtual private network providing at least one user interface from the second computer system to the first computer system.

However, Watterson et al. disclose by activating the iFit.com button 82 a signal is transmitted to communication system 18 to create a connection thereby allowing treadmill 12 to receive signals representative of exercise programming from communication system 18 wherein the connection with communication 18 enables the user to obtain the services of a stored trainer or a personal trainer to perform programming, ask questions, download or access programming materials, surf the web, gather and send e-mails, listen to audio programming, view video programming, review and update user information and statistics, purchase exercise programming, equipment, and materials, update exercise device software and operating parameters, research exercise materials, and the like (col. 10, lines 17–31 and FIG. 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of downloading exercise routines from a host from any exercise equipment.

29. **As per claim 42**, Shaw et al. do not disclose the apparatus wherein the operations include formatting output at a display device at said second exercise machine, said formatting including selectably enlarging the output.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made that an enlarged output is old and well-known type of display in the computer art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display of Watterson et al. to include an enlarged output so that users could have a better view of the program profile.

30. **As per claim 45**, Shaw et al. do not disclose the method of claim 6, wherein the operation include permitting, at discretion of the user, access to an exercise report, and storing the report in the profile.

However, Watterson et al. disclose if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92 (col. 37, lines 33–44; FIGS. 1 and 6); and the exercise profile of the intensity of various exercise criteria is displayed continually or periodically to the user during the performance of the programming (col. 7, lines 33–37).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the convenience of a trainer or doctor being able to view

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exercise reports, as well as, storing the readings for comparisons or analysis of progress.

31. **As per claims 48 and 82**, Shaw et al. does not expressly disclose apparatus of claim 6, wherein the different type of exercise machine comprises one of at least a treadmill, an elliptical trainer, a stationary bike, a stationary ski machine, a stationary rowing machine, or a resistance type machine.

However, Watterson et al. disclose in the event that only audio program session is desired, the user initially selects the type of equipment that the program is to be used, such as, but not limited to treadmills, cycles, steppers, hikers, climbers, Nordic style devices, ellipticals, and the like (col. 44, lines 19-23; FIGS. 14 and 19).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the ability to select different types of exercising equipment..

32. **As per claims 49, 80 and 83**, Shaw et al. do not disclose the method of claim 6, wherein the first computer system is programmed to facilitate digitally specifying the second exercise machine so that exercising is carried out at a location corresponding to at least one of a home, a gym, a spa, an exercise facility of an apartment complex, and a hotel.

However, Watterson et al. disclose in the event that only audio program session is desired, the user initially selects the type of equipment that the program is to be used, such as, but not limited to treadmills, cycles, steppers, hikers, climbers, Nordic style devices, ellipticals, and the like (col. 44, lines 19-23; FIGS. 14 and 19); and a exercise system that enables a user to access exercise equipment and equipment from a variety of locations (col. 2, lines 51-53).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of locating a machine available for exercising at a variety of locations.

33. **As per claim 51**, Shaw et al. do not disclose the apparatus of claim 6, wherein the operations include maintaining a business operations database for use in carrying out the translating.

However, Watterson et al. disclose that the iFit.com button 82 acts as both a selector and indicator of connectivity of treadmill 12 to communication system 18 and optionally treadmill 20, whether such connectivity is via translator device 13, computer 14, or directly from treadmill 12 (col. 9, lines 41-46 and FIG. 6); and alternatively, consumer purchase module 310 may include a database, whether relational, hierarchal, or the like that has stored specifications, pricing guides, illustrative images of exercise devices and products, and the like, that a user may search through to find the necessary or desired exercise equipment. Additionally, consumer purchase module 310 may include the necessary hardware and/or software modules to gather and store

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billing and purchase information from the user or alternatively, consumer purchase module 310 may communicate with a centralized accounting module that performs the necessary functions typically known by one skilled in the art related to accounting, billing, purchasing, sales, and the like activities (col. 38, lines 55-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the host the ability to maximize profits by monitoring use.

34. **As per claim 53, 71, and 85**, Shaw et al. do not disclose the apparatus method of claim 6, wherein the operations include further including forming a client profile database containing a profile for each of a plurality of users; and wherein the operations include further including accepting, with said second computer system, a gym registration application communicated from the first computer system a personal computer of the user.

However, Watterson et al. disclose following the logging in procedure, the user is given access, as depicted by block 340, to communication module 254 to the specific level that they are allowed, based upon their responses to the various questions asked during the login procedure wherein, for example, if a user defines the exercise device as a treadmill located at home, the user may be limited to only the treadmill related web pages of iFit.com website 300; and similarly, if a user does not define any account information the user may be limited to only the free web pages and information available thereon, while being restricted to access the fee-based web pages, such as to purchase exercise profiles, exercise equipment, and the like (col.6, lines 22-28).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the host the ability to store information on clients, as well as, monitor use.

35. **As per claim 57 and 59**, Shaw et al. do not disclose the apparatus of claim 6, wherein the operations include controlling output of visual and audio Internet media with said profile, the media including at least one of music, a video, multimedia, or chat; and providing, at the different type of exercise equipment, at least one user interface that includes a corresponding media display, the media from the group including at least one of video, audio, and text.

However, Watterson et al. disclose by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of viewing online content and making purchases online from any exercise equipment while exercising.

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36. **As per claims 58 and 81**, Shaw et al. do not disclose the apparatus of claim 6, wherein the first computer system is programmed so as to facilitate viewing and configuring reports including intensity levels of the exercise routine and heart rate through a web browser interface and at a personal computer.

However, Watterson et al. disclose it is possible for a user to exercise on a device, such as a treadmill, while a trainer receives data regarding the operating parameters of the treadmill, such as, speed, inclination, etc.; and upon receiving this data, the trainer can modify the operating parameters of the user's treadmill such that the user achieves a program designed by the trainer (col. 3, lines 50-57).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of being able to interact with machine and view exercise reports, as well as, storing the readings for comparisons or analysis of progress.

37. **As per claims 66 and 89**, Shaw et al. do not disclose the apparatus of claim 6, wherein the operations include providing entering a location indicator to find a gym capable of carrying out the step of providing control.

However, Watterson et al. disclose that the iFit.com button 82 acts as both a selector and indicator of connectivity of treadmill 12 to communication system 18, and optionally treadmill 20, whether such connectivity is via translator device 13, computer 14, or directly from treadmill 12 (col. 9, lines 41-46 and FIG. 6).

Watterson et al. is silent about entering an indicator to find a gym to carry out the step of controlling.

However, it would be obvious to one of ordinary skill in the art at the time the invention was made that if a user is inside a gym, the user would have to do this to this to find available exercise equipment.

38. **As per claim 67**, Shaw et al. do not disclose the apparatus of claim 6, wherein the exercise routine on the portable memory device includes an instruction providing control over speed of the different type of exercise machine.

However, Watterson et al. disclose it is possible for a user to exercise on a device, such as a treadmill, while a trainer receives data regarding the operating parameters of the treadmill, such as, speed, inclination, etc.; and upon receiving this data, the trainer can modify the operating parameters of the user's treadmill such that the user achieves a program designed by the trainer (col. 3, lines 50-57).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order to provide a safety mechanism for exercise equipment that may be going too fast.

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39. **As per claim 68**, Shaw et al. do not disclose the method of claim 6, wherein the operations include setting a filter of at least one of web subject matter or content in said profile.

However, Watterson et al. disclose by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6).

Watterson et al. is silent about setting a filter for at least one web subject matter or content in the profile, however, The Examiner takes Official notice that a web filter is an old and well-known type of content controller in the computer art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exercise device of Watterson et al. to include the web filter to control web subject matter and content the users has access to.

40. **As per claim 69**, Shaw et al. do not disclose the apparatus of claim 6, wherein the operations include controlling computer enabled permission for another to form a group of users.

However, Watterson et al. disclose activation of the communication system 18 enables exercise devices to have the potential of being controlled during an exercise program by a third party (col. 10, lines 32-39 and FIG. 6); and in one embodiment, as a third party controls the operation of the exercise devices, the trainer can communicate motivational messages to the trainee users. Watterson et al. further disclose that each user and/ or trainer may save unique exercise programs created by the user and/or trainer within data storage 390 accessible by mailbox module 386 (col. 39, lines 43-45 and FIG. 16)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order to provide the user the ability to give others access to the exercise equipment.

41. **As per claims 72-73 and 90**, Shaw et al. do not disclose accepting a gym registration application over the network; and accepting, with said second computer system, a gym registration application communicated from a computer of the user the fact of accepting a gym registration application over the network, however, accepting, with said second computer system, a gym registration application communicated from a computer of the user is nonfunctional descriptive matter. It is not functional interrelated with the useful acts of the claimed invention and thus will not serve as limitation. The steps of forming machine-readable instructions to control the exercise machine in carrying out the personal exercise routine would be performed the same regardless of whether the equipment is in a gym or a home. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to

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one of ordinary skill in the art at the time the invention was made to include the gym membership limitations because such data does not functionally relate to the steps in the method claimed and does not patentably distinguish the claimed invention.

42. Claims 12-13, 60 and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw et al., in view of Watterson et al. , in further view of Mahoney et al. (Patent Number 5,502,806).

43. As per claims 12-13, 60 and 88, Shaw et al do not disclose the apparatus of claim 3, further including wherein the operations include facilitating swiping at least one of a credit card or smart card for access to the different type of exercise machine.

However, Watterson et al. discloses that login registration module 302 assists the user in defining a login user identification number and password that are unique to the particular user. Watterson et al. discloses that following the logging in procedure, the user is given access (col. 36, lines 9-33).

Watterson et al. does not disclose swiping a credit card or smart card for access to the exercise equipment.

Mahoney et al. is silent about using that the waiting line management system on exercise equipment. However, exercise equipment could be considered within the scope of this invention because Mahoney et al. discloses that the invention can be applied in any situation where the current demand for the delivery of a service or admission to a facility exceeds the current capacity.

Therefore, it would have been obvious to modify the exercise equipment of Shaw et al. to include the feature of Watterson et al. to and Mahoney et al. to provide faster access to the personalized exercise routine and also because the problem solved by Mahoney et al., waiting line management, would work the same on exercise equipment as theme park rides.

44. Claims 63-64 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al. in view of Peterson et al. (Patent Number 6,052,512).

45. As per claims 63-64 and 84, Shaw et al. do not disclose wherein the operations include facilitating further including inputting membership of a gym into said profile; and wherein the operations include inputting location of the gym and a gym membership identification number to the first computer system.

However, Watterson et al. disclose that login-registration module 302 may track the particular locations where the user trains to identify a user profile of the user's exercise activities throughout the United States of America or the World, wherein such

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information may then be used to provide the user with specific information related to those locations where the user exercises most (col. 36, lines 61-66).

Watterson et al. is silent regarding inputting a gym membership, location of the gym, and a gym membership identification number into a profile.

Peterson et al. disclose that subject equipment 2210 is a computer processor-controlled piece of exercise equipment such as an exercise bicycle, treadmill, stair-stepper, skier, or climber; and a user identifies herself by swiping a gym membership card with a magnetic strip or bar code through a card reader attached to subject equipment 2210; and compliance monitor 2102 receives an identification number retrieved from the card reader and recognizes the user.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. and Peterson et al. in order to track the user's activity in order to send the user targeted advertising to exercise and non-exercise related businesses or services within the city or state of the place where the individual commonly visits or exercises (Watterson et al; col. 36, lines 67 to col. 37, line 3).

46. Claims 74-75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw et al. in view of Watterson et al., in further view of Netpulse.com.

47. As per claims 74-75, Shaw et al. do not disclose the step of managing a gym membership with said second computer system, tracking fees of gym users, and issuing invoices.

However, Netpulse.com discloses that Netpulse Communications manages a network of Internet-connected exercise machines in fitness centers around the country (Page 2); and Netpulse.com further discloses that the company's Netpulse Network is also becoming a valuable advertising, merchandising, and direct marketing tool for consumer product companies who want to reach an attractive demographic at the point of sweat. Netpulse.com does not expressly teach tracking fees of gym users, and issuing invoices, however, it is old and well known in the business industry that tracking and billing techniques are used where goods and services are provided on to customers.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. and Netpulse to include the tracking and billing feature in order to charge users for equipment and Internet usage.

Conclusion

48. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

49. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/F. A. N./
Examiner, Art Unit 3628

/John W Hayes/
Supervisory Patent Examiner, Art Unit 3628